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*Attorneys for Plaintiffs, individually and on behalf of all others similarly situated*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

KATE MCLELLAN, TERESA BLACK,  
DAVID URBAN, ROB DUNN, RACHEL  
SAITO, TODD RUBINSTEIN, RHONDA  
CALLAN, JAMES SCHORR, BRUCE  
MORGAN, and AMBER JONES, Individually  
and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

FITBIT, INC.,

Defendant.

JUDITH LANDERS, LISA MARIE BURKE,  
and JOHN MOLENSTRA, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiffs,

v.

FITBIT, INC.,

Defendant.

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Case Nos. 16-cv-00036-JD; 16-cv-00777-JD

**MOTION FOR LEAVE TO FILE  
MOTION FOR RECONSIDERATION**

No Hearing Date Set Pursuant to Civil Local  
Rule 7-9(d)

The Honorable James Donato

1 Pursuant to Civil Local Rule 7-9, Plaintiffs McLellan, Black, Urban, Saito, Rubinstein,  
2 Callan, Schorr, Morgan, Jones, Landers, Burke, and Molenstra (“Plaintiffs”) respectfully seek  
3 leave to move for reconsideration of the Court’s July 24, 2018 Order Re Arbitration Proceedings  
4 (the “Arbitration Order”). New material facts have emerged that warrant this Court’s  
5 reconsideration pursuant to Civil Local Rule 7-9(b)(2), and Plaintiffs have exercised reasonable  
6 diligence in bringing this motion.

7 In the Arbitration Order, the Court concluded, among other things, that, “[t]here is no  
8 doubt that Fitbit and its lawyers undermined arbitration in this one case” and noted that “[i]f Fitbit  
9 were to pursue similar tactics in other cases, good grounds might arise for avoiding enforcement  
10 of arbitration by reason of the vindication doctrine.” Dkt. 153 at 8-9. The Court expressly noted  
11 that “the door is open to further consideration of the question as circumstances might warrant,”  
12 and that “further evidence of untoward delay or obstruction of the arbitration by Fitbit may result  
13 in restoration of McLellan’s claims to the Court for resolution.” *Id.* at 9-10

14 As explained further in the proposed Motion for Reconsideration (attached as Exhibit 1  
15 hereto), on July 26, 2018, Plaintiffs received a letter from the AAA addressed to Fitbit’s counsel  
16 stating that Fitbit had never registered its consumer arbitration clause through AAA’s Consumer  
17 Clause Registry as required under Rule R-12 of the AAA’s Consumer Arbitration Rules. The fact  
18 that Fitbit, in all the years it has sold the products at issue and required consumers to agree to  
19 arbitrate and in the two-plus years it has spent asking this Court to force Plaintiffs’ claims into  
20 arbitration, never so much as registered its arbitration clause with the AAA or obtained AAA  
21 approval as required by AAA itself is further evidence that Fitbit never intended to arbitrate *any*  
22 consumer’s claim and that Fitbit misrepresented its intention to arbitrate to this Court.

23 Plaintiffs exercised “reasonable diligence” in filing this Motion for Leave six days after  
24 the Arbitration Order was entered and four days after becoming aware of this new material  
25 information, which time (1) was necessary to review the Arbitration Order and draft the Motion  
26 for Leave and proposed Motion for Reconsideration; and (2) is less than the prescribed time limit  
27 (28 days) to seek reconsideration under the similar Rule 59 of the Federal Rules of Civil  
28 Procedure. *See Hardeman v. Amtrak/Caltrain R.R.*, No. C04-03360 SI, 2006 WL 3734602, at \*1

(N.D. Cal. Dec. 18, 2006) (granting in part a motion for leave to file reconsideration filed more than four months after the issuance of the order in question); *True Health Chiropractic Inc. v. McKesson Corp.*, No. 13-CV-02219-JST, 2014 WL 6707594, at \*1 (N.D. Cal. Nov. 25, 2014) (motion for leave to file reconsideration filed 19 days after order satisfied “reasonable diligence” standard); *Milliner v. Mut. Sec., Inc.*, No. 15-CV-03354-TEH, Dkt. 113 (N.D. Cal. June 15, 2017) (granting in part a motion for leave to file reconsideration filed 16 days after the issuance of the order in question).

For the foregoing reasons, Plaintiffs respectfully seek leave to file the attached Motion for Reconsideration.

Dated: July 30, 2018

Respectfully submitted,

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By: /s/ Jonathan D. Selbin  
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15 *Attorneys for Plaintiffs, individually and behalf of all others*  
16 *similarly situated*  
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**CERTIFICATE OF SERVICE**

I hereby certify that, on July 30, 2018, service of this document was accomplished pursuant to the Court's electronic filing procedures by filing this document through the ECF system.

/s/ Jonathan D. Selbin  
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